

## **REMARKS**

### **The Rejections Based on Non-Statutory Double Patenting**

Claims 53-63 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-41 of U.S. Patent No. 5,831,066. Further, Claims 53-63 stand rejected under the judicially created doctrine of obviousness-type double patenting as being unpatentable over claims 1-21 of U.S. Patent No. 6,040,181. In order to expedite allowance of the present application, and without prejudice or disclaimer to Applicant's rights to pursue such claims in one or more continuing applications with or without filing a Terminal Disclaimer, Applicants have elected to provide a Terminal Disclaimer in this application disclaiming any term that would extend beyond the terms of U.S. Patent No. 5,831,066 and U.S. Patent No. 6,040,181.

According to the M.P.E.P., there is no statutory prohibition against withdrawing a recorded terminal disclaimer which was erroneously filed before the patent issues:

While the filing and recordation of an unnecessary terminal disclaimer has been characterized as an "unhappy circumstance" in *In re Jentoft*, 392 F.2d 633, 157 USPQ 363 (CCPA 1968), there is no statutory prohibition against nullifying or otherwise canceling the effect of a recorded terminal disclaimer which was erroneously filed before the patent issues. Since the terminal disclaimer would not take effect until the patent is granted, and the public has not had the opportunity to rely on the terminal disclaimer, relief from this unhappy circumstance may be available by way of petition or by refiling the application (other than refiling it as a CPA).

§1490(A).

Accordingly, Applicants reserve the right to withdraw the aforementioned terminal disclaimer.

## **CONCLUSION**

Applicants respectfully request entry of the foregoing remarks into the file of the above-identified application. Applicants believe that each ground for rejection or objection

has been overcome or obviated, and that all of the pending claims are in condition for allowance. Withdrawal of all outstanding rejections and objections is therefore respectfully requested. An early allowance is earnestly sought.

Respectfully submitted,

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Laura A. Coruzzi 30,742  
(Reg. No.)

PENNIE & EDMONDS LLP  
1155 Avenue of the Americas  
New York, New York 10036-2711  
(212) 790-9090

Enclosures